Testimony of

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Chairman Maloney, Vice Chairman Schumer, Congressman Cummings and members of the Committee, thank you for inviting me to testify at today's hearing. As the chief financial regulator for the state of Maryland, I am pleased to share information about our state's efforts to respond to the subprime lending crisis as it has manifested itself in Maryland. I also serve as the Chair of the Legislative Committee of the Conference of State Bank Supervisors.

Protecting Maryland residents from predatory mortgage lending has been a priority of mine since I took office as the Maryland Commissioner of Financial Regulation two years ago.

As you all know, the home foreclosure crisis has profoundly affected not only homeowners but also taxpayers, cities, and states. I have heard from Maryland citizens who can hardly believe the enormous sums of taxpayer dollars flowing into the large money-center financial institutions to keep them afloat. In return for their trillion-dollar investment, these same citizens demand accountability, and, just as importantly, they demand that something be done to stem the swelling tide of home foreclosures in their communities.

As the Commissioner of Financial Regulation, it is my obligation to pursue, within the boundaries of my authority, those who engaged in violations of all our laws, including our anti-predatory lending laws. State regulators have a long history as the first-line of protection for consumers. It was the states that first sounded the alarm against predatory lending and brought landmark enforcements against some of the biggest subprime lenders.

Indeed, state banking commissioners have aggressively pursued enforcement actions against predatory lending practices since the 1990's. And just last week, Maryland and 13 other states entered into a $9 million settlement with one of the ten largest wholesale mortgage lenders in the country. On Tuesday, Maryland issued a cease and desist order against a company that brokers usurious pay-day loans to Maryland residents.

My testimony is divided into two parts. First, I will discuss a couple of the enforcement actions that my office has pursued against participants who have violated our financial laws and regulations designed to protect consumers. Second, I will identify some of the key impediments to effective legislation and enforcement of fraud and other consumer protection laws and regulations by state banking commissioners.

Maryland is not a newcomer to the arena of predatory lending or its impact. Our state is ravaged by the fallout from irresponsible lending - too many loans that never should have been made – poorly underwritten, if at all, with features and loan terms that make it clear that the chance for success was limited. And all too often, these loans have had a disproportionate impact on minority communities. The Urban Institute published a study last month of subprime lending in 100 metropolitan areas. The study controlled for income levels and concluded that "the neighborhoods hardest hit by the subprime crisis have been those where minority residents predominate."[1]

The fallout is evident in foreclosures throughout our state, particularly Baltimore City and Prince George's County. Under a new law reforming the foreclosure process in our state, secured parties must send a Notice of Intent to Foreclose to homeowners at least 45 days prior to docketing the foreclosure. My office receives copies of these notices – and unfortunately they come in by the boxload. In the past twelve months, over 100,000 Notices of Intent to Foreclose have been sent to Maryland borrowers and to our office. Each day, we struggle to input the information into our database and to send outreach to the borrower regarding options for assistance and warnings about foreclosure scams.

With state attorneys general and other state regulators, Maryland has sought to cooperatively pursue unfair and deceptive practices in the mortgage market. Through several settlements, state regulators have returned nearly one billion dollars to consumers. In 2002, a settlement with Household Financial resulted in $484 million paid in restitution; that investigation targeted many of the practices that bring us to this room today. A settlement with Ameriquest Mortgage Company four years later resulted in $295 million paid in restitution; for those of us at the state level, the Ameriquest investigation marks the moment when we began to see the underwriting practices of mortgage lenders erode at a disturbingly accelerated pace.

While these cases have received most of the recognition, success is sometimes better measured by those actions that never receive media attention. In 2007 alone, states took almost 6,000 enforcement actions against mortgage lenders and brokers. But these cases do not include the unrecorded investigations and referrals for criminally punishable fraud and other crimes.

We have also moved through regulatory and legislative action. We have implemented regulatory changes through my office –

- establishing a standard of good faith and fair dealing for mortgage lenders, brokers, servicers, and originator;
- requiring that mortgage refinances provide the borrower with a net tangible benefit; and
- setting forth new marketing standards and risk management standards for non-traditional mortgage loans

Our state has also implemented statutory changes. These include requiring lenders to verify the borrower's ability to repay a mortgage loan at the fully indexed rate, prohibiting prepayment penalties in connection with residential mortgage loans, increasing surety bond requirements for mortgage lenders, enhancing mortgage originator licensing requirements in a way that conforms to the federal SAFE Mortgage Licensing Act, reforming the foreclosure process, and creating a process to track mortgage lenders

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[1] Source: Urban Institute, *The Impacts of Foreclosures on Families and Communities.* Thomas Kingsley, Robin Smith and David Price. May 2009

and originators throughout the life of a mortgage loan by requiring that this information be recorded with the instrument securing the loan.

These are important steps. Unfortunately, Wells Fargo, as a national bank, is not subject to these laws and regulations.

At the same time, Maryland was one of 14 states that most recently entered into a major settlement with Taylor, Bean & Whitaker Mortgage Corporation earlier this week. Taylor Bean is one of the 10 largest wholesale mortgage lenders in the country. They are also a major mortgage servicer – the 7th largest licensed servicer in Maryland. This agreement follows a coordinated examination conducted jointly by 14 states to evaluate compliance with laws and regulations pertaining to the origination of nontraditional mortgage loans made in 2006. These non-traditional products, also known as "exotic" loans represent the riskiest and most dangerous products on the mortgage market – "interest-only" mortgages, "payment option" adjustable-rate mortgages and stated income loans. In so many communities, these tools represent ground zero for the mortgage crisis.

Concern over these practices led Taylor Bean to stop offering nontraditional mortgages in early 2007 and to make other changes to its internal control processes. As part of this settlement, Taylor Bean agreed to implement a loan modification program in accordance with the Making Home Affordable Program, to implement a comprehensive compliance program and to retain a third party to review compliance with state laws for these products to determine if refunds are appropriate. Maryland conducted an initial review on its own that has already resulted in over $50,000 in refunds to our borrowers. Finally, Taylor Bean is paying $9 million as part of the settlement including $4.5 million to help fund the new Nationwide Mortgage Licensing System.

This coordinated, multi-state examination and its results underscore the efforts and progress that the states have made in addressing problems within the non-bank mortgage segment. These efforts, combined with an increased use of technology to support the examination process, are a critical step forward in protecting consumers and further professionalizing the mortgage industry.

Despite these enforcement and legislative successes, state actions have been hamstrung by the dual forces of preemption of state authority and lack of federal oversight. The authority of state banking commissioners to craft and to enforce consumer protection laws of general applicability was challenged at precisely the time it was most needed – when the amount of subprime lending exploded and riskier and riskier mortgage products came into the marketplace.

The laws passed by state legislatures to protect citizens and the enforcement actions taken by state regulators should have alerted federal authorities to the extent of the problems in the mortgage market and should have spurred a dialogue between state and federal authorities about the best way to address the problem. Unfortunately, this did not occur. Had the federal regulators not adopted preemptive policies, I suggest we would have fewer home foreclosures and may have avoided the need to prop up our largest financial institutions. It is worth noting that many of the institutions whose names were attached to the mortgage preemptive initiative in general, including two who served as plaintiffs in an action against my predecessor in Maryland for trying to invoke a state law regarding pre-payment penalties – National City and First Franklin – were all brought down by the mortgage crisis.

What is clear is that the nation's largest and most influential financial institutions have been major contributing factors in our regulatory system's failure to respond to this crisis. At the state level, we sometimes perceived an environment at the federal level skewed toward facilitating the business models and viability of our largest institutions, rather than promoting the strength of the consumer or our diverse economy.

At the same time that preemption of state consumer protection powers gained ground, federal agencies failed to fill the gap in regulation with uniform market-wide standards that ensured lenders did not engage in fraudulent, deceptive or unfair lending practices and to respond to the crisis. Congressman Cummings has seen this close up in the effort to gather information on mortgage modifications. My office gathers modification data and following concern regarding modifications that were not substantive, we required servicers to report the impact of modification on the borrowers' monthly payment last summer. When the results showed that 50+% of modifications did not lower the borrower's monthly payment, it was clear to us that this topic should be aired. Unfortunately, the federal authorities resisted. They dutifully reported that modifications were redefaulting at high rates, but resisted drilling into the nature of those modifications. Thankfully, Congressional action led by Congressman Cummings helped change things, and earlier this year, the OCC began collecting similar data regarding monthly payment.

Our federalist system of government is premised on the notion that federal and state regulation can co-exist and are in fact complementary. Moreover, even if sufficient federal regulations had been promulgated, they are only effective to the extent that the federal regulator is interested in enforcing them.

The void created by preemption in the face of a failure of federal oversight added a number of impediments for state banking commissioners in crafting legislation and in pursuing enforcement actions against predatory lenders. While it is too late to remove some of these impediments, there are some obstacles that can be eliminated to restore to state bank commissioners the ability to successfully regulate lending in the future.

One key point I would like to make is that Congress should eliminate the preemption of consumer protections enacted by the states. I urge Congress to promptly eliminate federal preemption of the application of the state consumer protection laws to national banks. The magic of federalism is that if one level of government falls asleep at the wheel or has too much to drink at the party, another can drive everybody home safely. But when you preempt our best laws, you take away the keys to the car and our license to drive.

Together with our nation's 50 banking commissioners, and with the Conference of State Bank Supervisors, I am supportive of provisions contained within President Obama's recently proposed financial regulatory reform plan that would grant state authorities the ability to promulgate statutes and regulations that would apply to all financial firms operating in our states, to examine for compliance of these statutes and rules, and to take enforcement actions against those entities that were found to be out of compliance with these statutes and rules.

The Administration's proposal to create a consumer financial product agency is interesting. This agency could require a federal minimum of consumer protections for particular products. Such a standard would declare a national norm but also would allow states to address new predatory practices as they evolve. This dynamic would create a floor for all lenders but still permit states to protect their citizens through more robust legislation and regulation.

Such ability to expand upon a basic federal standard is essential to the development of effective responses to new mortgage abuses as they emerge. Today, we see another mortgage storm brewing in the area of loss-mitigation consulting. Historically, we confronted fraudulent foreclosure transactions where title was conveyed as part of a scheme to strip homeowners of their equity. Today, with no equity left to strip, the rip-offs have become fee-based with so-called consultants charging high up-front fees to vulnerable consumers to help them get a loan modification. Too often, these efforts result in both wasted money and wasted time. Up front fees are restricted in Maryland and our office has recovered more than $80,000 for consumers to date. We have worked through the State Foreclosure Prevention Working Group to raise the issue with the Administration and to warn those overseeing the President's Housing Program of the potential for these practices to cause further financial instability. Congress can ban up-front fees at the federal level, or at least ensure that states have the flexibility to enforce their own laws against such "loss-mitigation consultants" who seem to be more in the business of loss aggravation.

To sum up, some bank commissioners have been predicting the current lending crisis for years, but few listened. Banks, lenders and mortgage brokers lobbied aggressively to prevent any regulation at either the state or federal level. There are lessons to be learned. First, the movement to erode state authority to enforce state and federal consumer protection laws must cease. Attempts to exclude state banking regulators from enforcing consumer protection laws have significantly contributed to the distress our residents have endured as a result of these difficult economic times. Thank you for the opportunity to testify before the Committee today.